

APPEAL NO. 040821  
FILED JUNE 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 23, 2004. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury of \_\_\_\_\_, extends to include a small posterior central disc protusion at L3-4 and a broad based right paracentral disc protusion at L5-S1, but does not extend to include a concentric annular bulge at L4-5 or disc dessication at L3 through L5-S1 or degenerative disc disease of the lumbar spine.

The appellant/cross-respondent (self-insured) appeals certain of the determinations and the conclusion that the compensable injury includes the disc protusions at L3-4 and L5-S1. The claimant appeals the determination excluding the concentric annular bulge at L4-5, disc dessication, and degenerative disc disease of the lumbar spine. The claimant responds to the self-insured's appeal, urging affirmance of the determination in her favor. The file does not have a response to the claimant's appeal from the self-insured.

DECISION

Affirmed.

It is undisputed that the claimant had long standing low back complaints of a degenerative nature. Regarding those complaints an MRI performed on December 19, 1997, is in evidence. It is also undisputed that on \_\_\_\_\_, the claimant sustained a compensable injury when she slipped on a curb, twisted, and grabbed a vehicle door handle to keep from falling to the ground. The self-insured accepted a low back sprain. The claimant first sought medical attention for her injury on February 24, 2002, and an MRI was performed on May 2, 2002.

The claimant asserts compensability of the claimed conditions identified in the May 2002 MRI based on aggravation of the preexisting condition. Dr. T testified for the self-insured, based on a record review, that the May 2002 MRI showed only typical degenerative conditions and an aggravation could only be determined by symptoms of radiculopathy or other nerve involvement "within a day or two of the incident." There was conflicting medical evidence which the hearing officer discussed in the background information. The hearing officer based his decision largely on a comparison of the 1997 and 2002 MRI reports. Part of the self-insured's appeal asserts that the hearing officer misinterpreted Dr. T's testimony by stating that Dr. T "seemed to 'require immediate, that is, almost same day radicular symptoms. . . .'" We have quoted what Dr. T said above and further note the self-insured's argument in closing that Dr. T's opinion would be different if there had been "immediate development of the symptoms" as noted by another doctor.

In any event there was conflicting medical evidence and the hearing officer explained how he reached his decision. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer's decision is supported by the evidence, is not incorrect on application of the law and is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

RM  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge